

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 235A.18, subsection 3, and 2012 Iowa Acts, House File 2226, the Department of Human Services amends Chapter 7, “Appeals and Hearings,” and Chapter 175, “Abuse of Children,” Iowa Administrative Code.

These amendments require a perpetrator’s name to be removed from the child abuse registry after ten years so long as the perpetrator has had no subsequent founded child abuse report within that ten-year period.

These amendments will allow only a person alleged responsible for the abuse to file an appeal regarding a child abuse report. If a person alleged responsible files an appeal, then all other subjects are notified of their right to file a motion to intervene in the appeal proceedings. All parties have the right to request that the administrative law judge (ALJ) stay the hearing if adjudication or district court decisions related to the data or findings are pending. All parties have the right to appeal the ALJ’s decision to the Director of the Department within ten days of the proposed decision. Only a person alleged responsible for the abuse may appeal the final decision to the higher courts.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0325C** on September 5, 2012. The Department received two comments on the Notice of Intended Action. In response to these comments, the Department has not made any changes to the amendments as published under Notice of Intended Action.

The first comment stated that there was agreement with the proposed rule making to remove a perpetrator’s name from the child abuse registry after ten years so long as the perpetrator has had no subsequent founded child abuse report within that ten-year period. There was a suggestion, however, that one additional criterion be met. Along with the ten-year rule, it was proposed that the Department add a stipulation that all victims of the perpetrator must meet the legal age of 18 prior to removal of the perpetrator’s name from the registry.

In response to this comment, the Department stated that the change in Iowa Code section 235A.18 requires a perpetrator’s name to be removed from the child abuse registry after ten years so long as the person had no subsequent founded child abuse report within that ten-year period. Iowa Code section 235A.18 does not allow the Department of Human Services to create administrative rules that require additional criteria, such as the comment suggested. A perpetrator’s name must be removed from the child abuse registry as set forth in the law.

The second comment stated that these amendments eliminate the provision about an appellant’s having an opportunity during the prehearing conference to examine the contents of the case record plus all documents and records to be used by the Department at the hearing in accordance with 441—Chapter 9. This comment also requested that the Department include written notice to the appellant in a timely manner, before the hearing, of the appellant’s right to request a prehearing conference, as well as the appellant’s right to examine the contents of the case record and all documents and records to be used by the Department at the hearing. Finally, the commenter stated that the notice should also inform the appellant how to request a prehearing conference and how to request access to the contents of the case record and all documents and records to be used by the Department at the hearing.

In response to the second comment, the Department noted that at the prehearing conference, the procedural matters include the establishment of a discovery deadline to allow all parties to formally request documents and examine the case file. This practice is highly encouraged by the Department and actually resolves many issues that led to the appeal. These amendments do not eliminate the appellant’s opportunity to examine the case records. Regarding notice to the appellant, the Department does send notice to all subjects of a child protection assessment at the conclusion of all assessments. In addition to providing the outcome of the assessment, the notice very clearly informs a person alleged responsible for the abuse of the person’s right to file an appeal and includes instructions on how to do so. An appellant does not need to request a prehearing conference. The prehearing conference is an automatic part of the

appeal process, and the appellant receives notification of the prehearing conference by the Department of Inspections and Appeals. It is at this prehearing conference that the appellant would be granted the opportunity to examine the case file and request documents.

Since publication of these amendments under Notice of Intended Action, citations to the 2011 Iowa Code Supplement and to 2012 Iowa Acts have been converted, where appropriate, to citations to the 2013 Code of Iowa. In addition, new Item 12 has been added to update the implementation sentence for Chapter 175.

These amendments do not provide for waivers in specified situations because no waiver provisions are necessary. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 235A.18, subsection 3, and 2012 Iowa Acts, House File 2226.

These amendments will become effective February 1, 2013.

The following amendments are adopted.

ITEM 1. Amend rule **441—7.1(17A)**, definition of “Aggrieved person,” as follows:

“*Aggrieved person*” means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. to 7. No change.

8. For the child or dependent adult abuse registry, juvenile sex offender registry or criminal record check evaluation, a person:

- Who is a person alleged responsible for child abuse.

- Who has requested correction of ~~child abuse~~ or dependent adult abuse information.

- Who has been restricted from or denied employment in a health care facility, state institution, or other facility based on a record check. “Employment” includes, but is not limited to, service as an employee, a volunteer, a provider, or a contractor. “Facilities” include, but are not limited to, county or multicounty juvenile detention homes and juvenile shelter care homes, child-placing agencies, substance abuse treatment programs, group living foster care facilities, child development homes, child care centers, state resource centers, mental health institutes, and state training schools.

- Who is contesting a risk assessment decision as provided in rule 441—103.34(692A) by alleging that the risk assessment factors have not been properly applied, the information relied upon to support the assessment findings is inaccurate, or the procedures were not correctly followed.

9. to 12. No change.

ITEM 2. Amend subrule 7.5(4) as follows:

**7.5(4) *Time limit for granting hearing to an appeal.*** Subject to the provisions of subrule 7.5(1), when an appeal is made, the granting of a hearing to that appeal shall be governed by the following timeliness standards:

a. to c. No change.

d. *Abuse standard.*

(1) For appeals regarding dependent adult abuse, a hearing shall be held if the appeal is made within six months after official notification of the action as provided in Iowa Code section 235B.10.

(2) For appeals regarding child abuse, a hearing shall be held if the appeal is made by a person alleged responsible for the abuse within 90 days after official notification of the action as provided in Iowa Code section 235A.19 ~~as amended by 2011 Iowa Acts, House File 562.~~ A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the hearing within 10 calendar days after the appeal notification.

(3) The day after the official notice is mailed is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

e. and f. No change.

ITEM 3. Amend subrule 7.8(4) as follows:

**7.8(4) Prehearing conference.** When ~~desired~~ requested by the appellant or department, a prehearing conference with a representative of the local office or the office which took the action appealed shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the conference, unless precluded by federal rule or state statute.

The purpose of the prehearing conference is to ~~provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action, to provide an opportunity for the appellant to explain the appellant's action or position, and to provide an opportunity for the appellant to examine the contents of the case record plus all documents and records to be used by the department at the hearing in accordance with 441—Chapter 9. A conference need not be requested for the appellant to have access to the records as provided in subrule 7.13(1) and 441—Chapter 9~~ discuss the appealed issue, to inquire as to voluntary settlement potential, to establish the hearing date, to establish the location of the hearing including whether the hearing will be by telephone or in person, and to discuss procedural matters relevant to the case.

ITEM 4. Amend subrule 7.8(6) as follows:

**7.8(6) Right of the department to deny or dismiss an appeal.** The department or the department of inspections and appeals has the right to deny or dismiss the appeal when:

- a. It has been withdrawn by the appellant in writing.
- b. The sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients.
- c. It has been abandoned.
- d. The agency, by written notice, withdraws the action appealed and restores the appellant's status which existed before the action appealed was taken.
- e. The agency implements action and issues a notice of decision to correct an error made by the agency which resulted in the appeal.

Abandonment may be deemed to have occurred when the appellant, or the appellant's authorized representative fails, without good cause, to appear at the prehearing or hearing.

ITEM 5. Amend rule 441—7.10(17A) as follows:

**441—7.10(17A) Procedural considerations.** ~~Upon receipt of the notice of appeal, the department shall:~~

**7.10(1) Registration.** ~~Register~~ Upon receipt of the notice of appeal, the department shall register the appeal.

**7.10(2) Acknowledgment.**

a. Send ~~Send~~ Upon receipt of the notice of appeal, the department shall send an acknowledgment of receipt of the appeal to the appellant, representative, or both. A copy of the acknowledgment of receipt of appeal will be sent to the appropriate departmental office.

b. For an appeal regarding child abuse, all subjects other than the person alleged responsible (appellant) will be notified of the opportunity to file a motion to intervene as provided in Iowa Code section 235A.19.

**7.10(3) to 7.10(7)** No change.

ITEM 6. Amend subrule 7.13(2) as follows:

**7.13(2) Conduct of hearing.**

a. The hearing shall be conducted by an administrative law judge designated by the department of inspections and appeals. It shall be an informal rather than a formal judicial procedure; and shall be designed to serve the best interest of the appellant. The appellant shall have the right to introduce any evidence on points at issue believed necessary, and to challenge and cross-examine any statement made by others, and to present evidence in rebuttal. A verbatim record shall be kept of the evidence presented.

b. For an appeal hearing regarding child abuse, the administrative law judge, upon request of any party to the hearing, may stay the hearing until the conclusion of the adjudicatory phase of a pending juvenile or district court case relating to the data or findings as provided in Iowa Code section 235A.19.

ITEM 7. Amend rule 441—7.14(17A) as follows:

**441—7.14(17A) Limitation of persons attending.**

**7.14(1)** The hearing shall be limited in attendance to the following persons, unless otherwise specified by statute or federal regulations: appellant, appellant's representative, agency employees, agency's legal representatives, other persons present for the purpose of offering testimony pertinent to the issues in controversy, and others upon mutual agreement of the parties. The administrative law judge may sequester witnesses during the hearing. Nothing in this rule shall be construed to allow members of the press, news media, or any other citizens' group to attend the hearing without the written consent of the appellant.

**7.14(2)** For an appeal hearing regarding child abuse:

a. Subjects who file a motion to intervene, as provided in Iowa Code section 235A.19, will have the opportunity to appear at the prehearing conference. Any motion to intervene shall be considered by the administrative law judge at the prehearing conference.

b. The department shall not be considered to be a party who can adequately represent the interests of any other subject.

c. Subjects allowed to intervene as specified in subrule 7.5(4) will be considered parties to the hearing and will be allowed to attend the proceedings as provided in Iowa Code section 235A.19.

ITEM 8. Amend subrule 7.16(4) as follows:

**7.16(4)** *Appeal of the proposed decision.* After issuing a proposed decision, the administrative law judge shall submit it to the department with copies to the appeals advisory committee.

a. The appellant, appellant's representative, a subject allowed to intervene as specified in subrule 7.5(4), the representative of a subject allowed to intervene as specified in subrule 7.5(4), or the department may appeal for the director's review of the proposed decision.

b. When the appellant, a subject allowed to intervene as specified in subrule 7.5(4), or the department has not appealed the proposed decision or when an appeal for the director's review of the proposed decision is not granted, the proposed decision shall become the final decision.

c. The director's review on appeal of the proposed decision shall be on the basis of the record as defined in subrule 7.16(1), except that the director need not listen to the verbatim record of the hearing in a review or appeal. The review or appeal shall be limited to issues raised prior to that time and specified by the party requesting the appeal or review. The director may designate another to act on the director's behalf in making final decisions.

ITEM 9. Amend subrule 7.16(9) as follows:

**7.16(9)** *Time limits.* A final decision on the appeal shall be issued within 90 days from the date of the appeal on all decisions except food assistance and vendors. Food assistance-only decisions shall be rendered in 60 days. PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee. Failure to reach a decision within these time frames shall not affect the merits of the appellant's appeal.

a. Time frames may be extended based on continuances or additional time frames as approved by the presiding officer. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed 30 days except with the approval of the administrative law judge, shall be granted and the extra time shall be added to the maximum for final administrative action.

b. For an appeal regarding child abuse, if the proposed decision is not appealed within 10 days from the date of the proposed decision, the proposed decision shall be the final agency action. If a party files an appeal within 10 days from the date of the proposed decision, the director has 45 days from the date of the proposed decision to issue a ruling. If the director does not rule within that 45-day period, the proposed decision becomes the final decision as provided in Iowa Code section 235A.19.

b. c. The department shall take prompt, definite and final administrative action to carry out the decision rendered within 7 calendar days of receipt of a copy of the final decision. When the final decision is favorable to the appellant, or when the department decides in favor of the appellant before

the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.

ITEM 10. Amend subrule 175.31(2) as follows:

**175.31(2)** *Notification of completion of assessment and right to request correction.* Written notice which indicates that the child abuse assessment is completed shall be provided to all subjects of a child abuse assessment and to the mandatory reporter who made the report of child abuse ~~which indicates that the child abuse assessment is completed.~~ Both custodial and noncustodial parents shall be notified if their whereabouts are known.

a. The notice shall contain the following information concerning the subject's rights to request correction and appeal rights. The subject may request correction of the information contained within the child protective assessment summary if the subject disagrees with the information. pursuant to Iowa Code section 235A.19:

(1) A subject may request correction of the information contained within the child protection assessment summary if the subject disagrees with the information.

(2) A person alleged responsible for the abuse has the right to appeal if the department does not correct the data or findings as requested.

(3) A subject, other than the person alleged responsible for the abuse, has the opportunity to file a motion to intervene in an appeal hearing.

b. If the child protective assessment results in a determination that abuse is confirmed, the notice shall indicate the type of abuse, name of the child and name of the person responsible for the abuse and whether the report has been placed on the registry.

ITEM 11. Amend rule 441—175.39(232) as follows:

**441—175.39(232) Founded child abuse.** Reports of child abuse where abuse has been confirmed shall be placed on the central abuse registry as founded child abuse for ten years under any of the circumstances specified by Iowa Code section 232.71D ~~as amended by 2011 Iowa Acts, House File 562.~~ Reports When none of the placement criteria listed in Iowa Code section 232.71D(3) "b" are applicable, reports of denial of critical care by failure to provide adequate clothing or failure to provide adequate supervision and physical abuse where abuse has been confirmed and determined to be minor, isolated, and unlikely to reoccur shall not be placed in on the central abuse registry as a case of founded child abuse as specified by Iowa Code section 232.71D as amended by 2011 Iowa Acts, House File 562. The confirmed abuse shall be placed on the registry unless all three conditions are met.

**175.39(1)** *Confidentiality of founded child abuse report and data.* The confidentiality of report and disposition data pertaining to founded child abuse shall be maintained as provided in Iowa Code chapter 235A. Access to the report and disposition data on founded child abuse is authorized only as provided in Iowa Code section 235A.15.

**175.39(2)** *Sealing and expungement of founded child abuse report and data.* Report and disposition data pertaining to founded child abuse shall be sealed and expunged as provided in Iowa Code section 235A.18.

ITEM 12. Amend **441—Chapter 175**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 232.68, ~~and 232.71D, as amended by 2011 Iowa Acts, House File 562,~~ Iowa Code sections 232.67, 232.69, 232.70, 232.71B, 232.71C, and 232.72 to 232.77 and Iowa Code chapter 235A ~~as amended by 2011 Iowa Acts, House File 562.~~

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